IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. No. 02-00175 SOM-04
	)	
Plaintiff,	)	ORDER DENYING DEFENDANT
	)	LESLIE KEKAHUNA'S MOTION
vs.	)	[UNDER] RULE 69(b)(1) AND
	)	MOTION TO DISQUALIFY JUDGE
LESLIE KEKAHUNA,	)	SUSAN O. MOLLWAY
	)	
Defendant.	)	
_____	)	

ORDER DENYING DEFENDANT LESLIE KEKAHUNA'S MOTION [UNDER] RULE 69(b)(1) AND MOTION TO DISQUALIFY JUDGE SUSAN O. MOLLWAY

Defendant Leslie Kekahuna, proceeding pro se, has submitted two motions to this court. First, Kekahuna has filed a Motion [Under] Rule 69(b)(1), which seeks "resentencing in accordance to the advisory requirement set forth in United States v. Booker." Second, Kekahuna has filed a Motion To Disqualify Judge Susan O. Mollway, which asserts that this judge participated in plea bargaining and that this judge's impartiality might reasonably be questioned. This court denies the first motion for lack of jurisdiction. That renders the second motion moot.

Turning first to the motion seeking resentencing, this court notes that Kekahuna presently has an appeal pending in the Ninth Circuit. This court lacks jurisdiction to address a sentence that is the subject of a pending appeal challenging the sentence. That motion is therefore denied.

As the above denial leaves this court without any matter affecting Kekahuna before it, disqualification is a nonissue. The disqualification motion is therefore denied as moot. The court does note that the disqualification motion appears to be based on a misapprehension of this judge's actions. At the time of sentencing, this judge had already accepted a guilty plea. The court is therefore at a loss to understand Kekahuna's argument that this court, at the time of sentencing, "participate[d] in plea bargaining." The transcript pages attached to Kekahuna's papers show that this court continued the sentencing hearing to allow Kekahuna to attempt to qualify for the safety valve, not to enter into any plea bargain.

The Clerk of Court is directed to send a copy of this order to Assistant United States Attorney Thomas Muehleck; to Defendant Leslie Kekahuna, No. 89329-022, P.O. Box 3007, FCI Terminal Island, San Pedro, CA 90731; and to David Bettencourt, Esq.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, January 12, 2006.

Susan Oki Mollway
United States District Judge

United States v. Kekahuna; CR. No. 02-00175 SOM-04; ORDER DENYING DEFENDANT LESLIE KEKAHUNA'S MOTION [UNDER] RULE 69(b)(1) AND MOTION TO DISQUALIFY JUDGE SUSAN O. MOLLWAY